Remarks/Arguments:

Claims 1, 3, 10, 12, 16-19, 21-22, 28-29 and 31-32 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5926468 (Chapman) in view of U.S. Patent No. 7,032,153 (Zhang). Claims 2, 4-9, 11, 13-15, 20, 23-27, 30 and 33-44 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman and Zhang, in various combinations with U.S. Patent No. 6,912,387 (Haas), U.S. Publication No. 2004/0151136 (Gage), U.S. Patent No. 5682460 (Hyziak), U.S. Patent No. 6771594 (Upadrasta), U.S. Patent No. 7,486,634 (Itoh) and U.S. Published Application No. 2005/0165948 (Hatime). Applicant respectfully disagrees that the subject claims are unpatentable, for at least the reasons set out below.

Missing Limitations

Applicant notes that in order to support a rejection under 35 U.S.C. 103(a), the Examiner must show that the asserted combination of art teaches or suggests each and every limitation of the rejected claim:

> "When determining whether a claim is obvious, an examiner must make "a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art." *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (*emphasis added*). Thus, "obviousness requires a suggestion of all limitations in a claim." *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974))."

Ex Parte Wada and Murphy, Appeal No. 2007-3733, Bd. Pat. App. & Inter., January 14, 2008. The Examiner's asserted combination of art fails to satisfy at least one limitation of the claims, and the claim rejections therefore cannot be maintained.

The Examiner conceded that Chapman fails to satisfy the limitations, "developing a retry strategy for said transmitting step based on said determined quality; and, retransmitting said at least one packet according to said retry strategy" as recited in claim 1. The Examiner relied on Zhang to provide those limitations. However, even accepting, *arguendo*, that the combination of Chapman and Zhang satisfies the above-recited limitations, the asserted combination fails to satisfy additional limitations, as discussed below.

In particular, claim 1 recites, in part, as follows:

> "determining, responsive to said transmitting step failing, a quality of said link at an electronic device by examining quality-of-service (QoS) information available within a second layer of said protocol stack; said second layer being a different layer in said protocol stack than said first layer;"

The Examiner asserts at page 4 of the office action that various portions of Chapman (col. 1, ll. 65 - col. 2, ll. 33; col. 2, ll. 38-65; col. 6, ll. 40-57) satisfy the above-recited limitation. In particular, the Examiner states that the cited portions of Chapman "explain determining the condition or quality of the data link, which is different from the transport layer or layer 4 of the link or communication medium, by resetting the data link at the data link layer of the first entity or the transmitting device." In general, the above-cited portions of Chapman describe the resetting of Chapman's data link layer if a predetermined number of frames fail to reach their intended destination. No mention is made of determining a quality of a link, regardless of how that quality is determined. Resetting data link layers at entities involved in a communication does **not** constitute a determination of link quality by either entity. It is clear that Chapman has not

contemplated the examination of quality-of-service information by either entity, as the only action taught by Chapman when frames fail to arrive at their destinations is to attempt to reset data link layers at each entity participating in the communication.

In addition to the above deficiencies in Chapman's teaching, Applicant notes that the Examiner's arguments relating to the "first layer" and "second layer" recited in claim 1 are unclear. More specifically, the Examiner first asserted that Chapman's transmission of frames over a link is equivalent to the transmission of packets over the OSI transport layer. Applicant notes that neither Chapman nor claim 1 make any mention of a "transport layer", and infer that the Examiner considers the link between Chapman's data link layers at respective entities (as shown in Figure 2) to be equivalent to the "first transport" recited in claim 1 and to the OSI transport layer.

The Examiner went on, however, to directly contradict the above assertion and state that Chapman's data link (that is, the link between data link layers at respective entities) is **different** from the transport layer. This assertion appears to have been made in order to support the Examiner's contention that Chapman's data link is equivalent to Applicant's "second layer" as recited in claim 1. Such a contention, however, cannot be supported. Regardless of the nature of Chapman's data link, it cannot possibly be equivalent to both Applicant's first and second layers, because the first and second layers are defined by claim 1 as being different.

Chapman does describe other layers than the data link layers. As shown in Figure 2, the data link layers at both entities are accompanied by store and forward/sync layers and encryption/decryption layers. The additional layers, however, are not involved in the transmission of frames **or** in the resetting of the

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data link layers. That is, throughout Chapman's description, **only** the data link layers are discussed with respect to frame transmission and resetting. The additional layers are thus of no assistance in satisfying either of Applicant's first and second layers.

Chapman therefore fails to satisfy at least the above-recited limitations of claim 1. No other teaching of the above-recited limitations was asserted in the office action, and the rejection of claim 1 cannot be supported.

Claim 1 is therefore patentable for at least the above reasons. Claims 10 and 16 recite limitations similar to those of claim 1, and are therefore also patentable for at least the above reasons. All remaining claims are dependent upon one of claims 1 and 10, and are therefore also believed to be patentable for at least the above reasons.

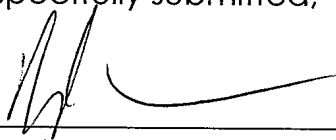Reconsideration and allowance of all pending claims is respectfully requested.

Conclusion:

Applicant believes that this application is now in condition for allowance. To the extent that any issues remain to be resolved, however, Applicant requests that the Examiner contact the undersigned to resolve these issues.

The Commissioner is also authorized to charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-3750.

Date: June 9, 2010

Respectfully submitted,

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